

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-494

September 5, 2001

VERIZON NEW ENGLAND INC. D/B/A
VERIZON MAINE
Request for Approval of
Interconnection Agreement With
Network Access Solutions Corporation

ORDER APPROVING
INTERCONNECTION
AGREEMENT WITH
NETWORK ACCESS
SOLUTIONS CORPORATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order, we approve an interconnection agreement between Verizon New England Inc. d/b/a Verizon Maine (Verizon Maine) and Network Access Solutions Corporation (NAS), pursuant to section 252 of the Telecommunications Act of 1996.

On July 17, 2001, Verizon Maine filed a negotiated interconnection agreement with NAS, pursuant to 47 U.S.C. § 252, enacted by the Telecommunications Act of 1996.¹ Interconnection agreements provide for interconnection between an incumbent local exchange carrier (ILEC) and another telecommunications carrier, including a competitive local exchange carrier (CLEC). An interconnection agreement may allow a telecommunications carrier to purchase unbundled network elements or local services at a discounted wholesale rate (the discount reflecting avoided cost), or both, from an ILEC (or CLEC).

The agreement incorporates terms and conditions of a separate interconnection agreement between Verizon New Jersey Inc., f/k/a Bell Atlantic-New Jersey, Inc. and NAS, approved by the New Jersey Board of Public Utilities on May 9, 2001 in Docket No. TO00090676 (the "Separate Agreement," attached as Appendix 1 to the agreement filed in this proceeding). Verizon Maine's filing included Amendment No. 1 to the Separate Agreement to provide for Line Sharing. We consider that Amendment an integral part of the Separate Agreement.

The agreement filed by Verizon Maine incorporates a blank Schedule 4.1, titled "Network Interconnection Schedule." That Schedule is apparently intended to set activation dates on which traffic between Verizon and NAS will occur to implement the agreement. We note that the schedule has been left substantively blank. When the parties agree on a time frame to implement the filed agreement, they should file a completed Schedule 4.1 as an amendment to the agreement we approve today.

¹ Previously, on May 4, 1999 in Docket No. 99-234, the Commission approved an amended interconnection agreement between Verizon and NAS.

NAS will pay to Verizon Maine the interconnection prices contained in the voluntary agreement that was reached pursuant to arms-length negotiations between the parties. The pricing standards contained in 47 U.S.C. § 252(d) apply only to arbitration proceedings under section 252(b) and not to negotiated agreements under section 252(a). Verizon Maine does not represent that the prices contained in the agreement are consistent with the section 252(d) pricing standards or with any other state or federal policy.

Section 252(e)(2) states that a state commission may reject a negotiated agreement only if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or if "the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity." We received no comments by the comment deadline set in an August 2, 2001 Notice of Agreement and Opportunity to Comment. We do not make either of the findings set for in section 252(e)(2) for rejection, and we therefore approve the agreement.

We qualify our approval in two respects, however, and reserve findings on future potential issues. First, we reserve judgment on whether the rates contained in the agreement are reasonable from the perspective of Verizon Maine's retail ratepayers. Verizon Maine is presently under an alternative form of regulation (AFOR) ordered by the Commission in Docket No. 94-123. The AFOR began in December, 1995. Under the AFOR, Verizon Maine bears the risk of lost revenues resulting from rates that are too low. In Docket No. 99-851, we have continued the AFOR until May 31, 2006. We do not resolve whether Verizon Maine is receiving reasonable compensation from any CLECs that may avail themselves of the rates provided to NAS pursuant to 47 U.S.C. § 252(i).

Second, section 271(c) of the Act, 47 U.S.C. § 271(c), requires that the Bell Operating Companies (BOCs) meet certain requirements before they are allowed to provide interLATA service (the so-called "competitive checklist"). Under section 271(d)(3), the Federal Communications Commission (FCC) must determine whether the BOC has met the competitive checklist before granting the BOC authority to provide interLATA service within its region. Prior to making that determination, the FCC must consult with state commissions to verify the compliance of the BOC with the checklist. Our approval of this agreement should not be construed as a finding that Verizon Maine has met those requirements.

We note that in the filed agreement letter, "NAS represents and warrants that it is a certified provider of local telecommunications service in the State of Maine...". To the contrary, this Commission has not granted authority to NAS to operate in Maine at this time. If NAS wishes to provide public utility services, other than mobile telecommunications services as defined in 35-A M.R.S.A. § 102(9-A), it must seek Commission authorization to provide those services pursuant to 35-A M.R.S.A. § 2102, and we will require NAS to maintain schedules of rates, terms, and conditions pursuant to 35-A M.R.S.A. §§ 304. The terms and conditions shall specify the areas in which the utility

will actually provide originating and terminating local exchange service, and may do so by reference to incumbent local exchange carrier exchanges rather than by municipalities.

The agreement filed by Verizon Maine provides for interconnection between NAS and Verizon Maine's network in Maine. If NAS seeks to interconnect with networks maintained by other incumbent local exchange carriers in Maine, it must seek a termination, suspension, or modification of the exemption contained in 47 U.S.C. 251(f)(1)(A).

ORDERING PARAGRAPHS

Accordingly, we

1. Approve the Interconnection Agreement between Verizon New England Inc. d/b/a Verizon Maine and Network Access Solutions Corporation, attached hereto, pursuant to 47 U.S.C. § 252(e);
2. Order that Network Access Solutions Corporation shall not provide local exchange telephone service until the Commission grants authority to Network Access Solutions Corporation to provide such service and until the Commission approves schedules of rates, terms and conditions for the provision of such service; and
3. Order that the Administrative Director shall make a copy of the attached Agreement available for public inspection and copying pursuant to 47 C.F.R. § 252(h) within 10 days of the date of this Order.

Dated at Augusta, Maine this 5th day of September, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch

Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.